

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 KIM M. SETTLES
Deputy Attorney General
4 State Bar No. 116945
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2138
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **STATE BOARD OF OPTOMETRY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. CC 2010-163

12 **DUC BUI**
10969 N. Wolfe Road
13 Cupertino, CA 95014

A C C U S A T I O N

14 **Optometrist License No. 11044**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as
20 the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

21 2. On or about August 24, 1998, the State Board of Optometry issued Optometrist
22 License Number 11044 to Duc Bui (Respondent). The Optometrist License will expire on July
23 31, 2014, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the State Board of Optometry (Board), Department
26 of Consumer Affairs, under the authority of the following laws. All section references are to the
27 Business and Professions Code unless otherwise indicated.
28

4. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

5. Section 810 of the Code states in relevant part that:

“(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.”

6. Section 3105 of the Code provides that:

“Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct. In addition to any other disciplinary action, the State Board of Optometry may impose a civil penalty of five hundred dollars (\$500) for a violation of this section.”

7. Section 3106 of the Code states that:

“Knowingly making or signing any certificate or other document directly or indirectly related to the practice of optometry that falsely represents the existence or nonexistence of a state of facts constitutes unprofessional conduct.”

8. Section 3110 of the Code states:

"The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional

1 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
2 limited to, the following:

3 "(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the
4 violation of, or conspiring to violate any provision of this chapter or any of the rules and
5 regulations adopted by the board pursuant to this chapter.

6

7 "(e) The commission of fraud, misrepresentation, or any act involving dishonesty or
8 corruption, that is substantially related to the qualifications, functions, or duties of an
9 optometrist."

10 9. Penal Code section 550 states, in relevant part:

11 "(a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire with any
12 person to do any of the following:

13 . . .

14 "(6) Knowingly make or cause to be made any false or fraudulent claim for payment of a
15 health care benefit.

16 (7) Knowingly submit a claim for a health care benefit that was not used by, or on behalf
17 of, the claimant."

18 COST RECOVERY

19 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licensee found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case.

23 FIRST CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct – Insurance Fraud)

25 11. Respondent has subjected his license to disciplinary action under Code section 810,
26 subdivisions (a)(1) and (2), in conjunction with Code section 3110, subdivisions (a), (e), and (f) in
27 that Respondent fraudulently submitted bills to Vision Service Plan (VSP), as follows:
28

12. On or about June 2 and 3, 2009, VSP conducted an unannounced audit at Respondent's office of 83 patient records representing 138 claims submitted to VSP. The audit revealed that many of Respondent's records did not support the claims to VSP as follows:

- (a) There was no documentation to support an order for contact lenses.
- (b) Fittings were not sufficiently documented.
- (c) Patient exams were not documented.
- (d) Some orders for reader glasses were marked "rush" when the patient actually received sunglasses with Plano lenses.
- (e) Many claims were made for contact lenses only when the patient chart indicates that the patient received sunglasses or frames.

13. On or about March, 2011, VSP terminated its insurance contract with Respondent after an audit revealed that Respondent had submitted improper claims to VSP totaling \$357,300.00. Respondent repaid the restitution demand to VSP in the amount of \$357,300.00 for improper claims and \$9,674.00 for the cost of the VSP audit.

14. Incorporating by reference the allegations in Paragraphs 11 through 13, Respondent's conduct, in knowingly presenting false and fraudulent claims to VSP for payment, constitutes unprofessional conduct within the meaning of Code sections 810, subdivisions (a)(1) and (2) and provides grounds for disciplinary action under Code section 3110, subdivisions (a), (e), and (f).

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Alteration of Medical Records)

15. Respondent has subjected his license to disciplinary action under Code section 3105, in conjunction with Section 3110, subdivisions (a) and (e), in that Respondent fraudulently submitted bills to VSP.

16. Incorporating by reference the allegations in Paragraphs 11 through 13, Respondent's conduct, in fraudulently submitting bills to VSP, necessarily involved altering, modifying and/or omitting information in the medical records of some of his patients, and creating a false medical record with fraudulent intent. This conduct constitutes unprofessional conduct within the

1 meaning of Code section 3105 and provides grounds for disciplinary action under Code section
2 3110, subdivisions (a) and (e).

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – False Representation of Facts)**

5 17. Respondent is subject to disciplinary action under Code section 3106, in conjunction
6 with Code section 3110, subdivision (e), in that Respondent fraudulently submitted bills to VSP.


7 18. Incorporating by reference the allegations in Paragraphs 11 through 16, Respondent's
8 conduct, in fraudulently submitting bills to VSP, necessarily involved knowingly creating
9 paperwork directly related to his practice of optometry that falsely represented facts regarding
10 several of his patients. This constitutes unprofessional conduct within the meaning of Code
11 section 3106 and provides grounds for disciplinary action under Code section 3110, subdivision
12 (e).

13 **PRAAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the State Board of Optometry issue a decision:

- 16 1. Revoking or suspending Optometrist License Number 11044, issued to Duc Bui;
17 2. Ordering Duc Bui to pay the State Board of Optometry the reasonable costs of the
18 investigation and enforcement of this case, pursuant to Business and Professions Code section
19 125.3;
20 3. Taking such other and further action as deemed necessary and proper.

21 DATED: February 12, 2013


22 MONA MAGGIO
23 Executive Officer
24 State Board of Optometry
25 Department of Consumer Affairs
26 State of California
27 Complainant
28

SF2012901062
90268901.doc